

**RELEASE AGREEMENT**  
-- Otay Mesa Step-In-Rights --

THIS RELEASE AGREEMENT (this "Agreement"), dated and made effective as of the date set forth at the end of this Agreement, is by and between the State of California Department of Water Resources with respect to its responsibilities pursuant to California Water Code Section 80000 *et seq.* regarding the Department of Water Resources Electric Power Fund separate and apart from its powers and responsibilities with respect to the State Water Resources Development System ("DWR") and Calpine Energy Services, L.P. ("Calpine"), and is made with reference to the Transaction agreed to on April 22, 2002 and effective May 1, 2002, as amended by the Amendment dated October 23, 2003 and the Letter Amendment dated October 29, 2003, as amended by the Modification Letter dated March 30, 2005 (collectively, the "Confirmation"), between Calpine and DWR. Capitalized terms used but not defined herein shall have the meanings specified in the Confirmation.

**RECITALS**

WHEREAS, Special Condition 4 of the Confirmation provides DWR with certain Step-in Rights with respect to the Otay Mesa Project; and

WHEREAS, on or about October 23, 2006, Calpine Corporation and certain of its affiliates (collectively, the "Calpine Parties") executed a PPA Reinstatement Agreement (the "Reinstatement Agreement") with San Diego Gas & Electric Company ("SDG&E"), pursuant to which the Calpine Parties and SDG&E have, among other things, agreed to reinstate a power purchase agreement between Otay Mesa Energy Center, LLC and SDG&E to facilitate construction of the Otay Mesa Project; and

WHEREAS, the obligations of SDG&E and the Calpine Parties to consummate the transactions contemplated by the Reinstatement Agreement, including construction of the Otay Mesa Project, are conditioned upon DWR irrevocably releasing and terminating any and all "Liens" in its favor against the Otay Mesa Project; and

WHEREAS, subject to the terms of this Agreement, DWR has agreed, at Calpine's request, to irrevocably release and terminate any and all "Liens" in its favor against the Otay Mesa Project.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Calpine and DWR agree as follows:

1. *Release/Termination of Step-In-Rights.* Subject to the terms of Section 2 hereof, DWR hereby irrevocably releases and terminates, effective as of the Closing, as such term is defined in Section 3.1 of the Reinstatement Agreement (the "Closing"), all Step-in Rights it has or may claim to have under the Confirmation with respect to the Otay Mesa Project, including without limitation, those specified in Special Conditions 4(d) and 4(h).

2. *Limitations on Release/Termination of Step-In-Rights.* Notwithstanding anything to the contrary contained herein, the release and termination set forth above in Section 1 shall not be effective if:

- (a) Closing occurs, without DWR's prior written consent, later than June 30, 2007; or
- (b) The Financing condition precedent set forth in Section 4.1(1) Reinstatement Agreement ("the Financing") has not been fulfilled and the Calpine Parties have not received monies to fund construction of the Otay Mesa Project pursuant to the Financing.

3. *Forbearance.* DWR agrees to forbear from exercising any rights or remedies it has or may claim to have under Special Condition 4 of the Confirmation with respect to the Otay Mesa Project through and including June 30, 2007. Thereafter, if the release and termination of the Step-In Rights described herein has not become effective, then subject to any limitations set forth in the Confirmation, the United States Bankruptcy Code (11 U.S.C. § 101 et seq.), or any other applicable law, DWR shall be free to exercise any rights or remedies it has or may claim to have under the Confirmation with respect to the Otay Mesa Project, all of which rights and remedies are hereby expressly reserved.

4. *Certificate of Closing.* Calpine agrees to deliver to DWR, substantially contemporaneous with Closing, a certificate reasonably acceptable in form to DWR signed by a duly authorized officer of Calpine certifying that (a) the Closing has occurred, and (b) no fact or circumstance exists that, pursuant to the terms of Section 2 hereof, prevents or might prevent the release and termination provided for herein from becoming effective as of the Closing.

5. *Further Assurances.* Calpine and DWR each agree to take any further actions and to make, execute, and deliver any further written instruments which may be reasonably required to carry out the terms, provisions, intentions, and purposes of this Assignment.

6. *Termination.* This Agreement and all obligations of Calpine and DWR hereunder shall automatically terminate if the Reinstatement Agreement is terminated by any party thereto. Upon termination, this Agreement shall be null and void and of no further effect, and all rights, duties, and obligations of the parties shall be restored as if this Agreement had never been executed.

7. *Representations and Warranties.* Calpine and DWR each represent and warrant to the other that: (a) it has all necessary power and authority to execute and deliver this Agreement and to perform its respective obligations hereunder; (b) this Agreement has been duly and validly delivered, and constitutes a legal, valid and binding obligation; and (c) no authorization, consent, approval or other action is or will be necessary as a condition to execution and delivery of this Agreement and the performance of the obligations hereunder.

8. *Notices.* All notices and requests required or given hereunder shall be in writing and addressed as follows:

*To DWR:*

Timothy J. Haines  
Deputy Director  
California Department of Water Resources, CERS  
3310 El Camino Avenue, Suite 120  
Sacramento, CA 95821  
Facsimile: (916) 574-0301

with a duplicate copy to:

California Department of Water Resources  
1416 Ninth Street  
Sacramento, California 95814  
Attn: Office of the Chief Counsel  
Facsimile: (916) 654-9822

*To Calpine:*

Calpine Energy Services, L.P.  
c/o Calpine Corporation  
50 West San Fernando  
San Jose, CA 95113  
Attn: General Counsel  
Facsimile: (408) 995 0505

with a duplicate copy to:

Calpine Energy Services, L.P.  
c/o Calpine Corporation  
3875 Hopyard Road  
Pleasanton, CA 94588  
Attn: Regional Executive  
Facsimile: (925) 479 7303

Notices may be delivered by hand delivery, United States mail, overnight courier service or facsimile. A Party may change its addresses by providing notice of same in accordance herewith.

9. *Ratification.* Except to the extent expressly modified by this Agreement, the terms and conditions of the Confirmation remain unchanged and in full force and effect.

10. *Entire Agreement/Waiver.* This Agreement constitutes the entire agreement of the parties. No modification, amendment or waiver of any of the provisions of this Agreement shall be effective unless in writing and signed by the parties hereto.

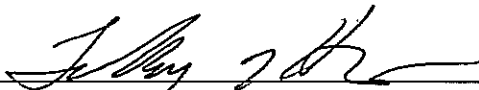
11. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which, when executed, will be deemed to be an original and all of which taken together will be deemed to be one and the same instrument. This Agreement may be executed by signature via facsimile transmission, which shall be deemed to be the same as an original signature.

12. *Governing Law.* This Agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflicts of law.


IN WITNESS WHEREOF, this Agreement has been executed and made effective as of this 6<sup>th</sup> day of March, 2007.

**STATE OF CALIFORNIA DEPARTMENT OF  
WATER RESOURCES** with respect to its  
responsibilities pursuant to California Water Code  
Section 80000 *et seq.* regarding the Department of  
Water Resources Electric Power Fund separate and  
apart from its powers and responsibilities with  
respect to the State Water Resources Development  
System

\_\_\_\_\_  
Witness

By:   
Timothy J. Haines, its Deputy Director

Approved as to form and legal sufficiency

By:   
David A. Sandino, Acting Chief Counsel

**CALPINE ENERGY SERVICES, L.P.**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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Witness


By: \_\_\_\_\_  
Timothy J. Haines, its Deputy Director

Approved as to form and legal sufficiency

By: \_\_\_\_\_  
David A. Sandino, Acting Chief Counsel

**CALPINE ENERGY SERVICES, L.P.**

Linda DeLaCruz  
Witness

By:   
Print Name: Eric N. Pryor  
Title: Vice President